

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAII SUPERFERRY, INC. )

For a Certificate of Public )  
Convenience and Necessity to )  
Engage in Operations as a )  
Water Carrier. )

DOCKET NO. 04-0180

ORDER NO. 22934

Filed Oct. 11, 2006  
At 10 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

2006 OCT 12 A 9:24

RECEIVED

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
                  HAWAII SUPERFERRY, INC.        )  
For a Certificate of Public                        )  
Convenience and Necessity to                    )  
Engage in Operations as a                        )  
Water Carrier.                                    )  
\_\_\_\_\_)

Docket No. 04-0180  
Order No. 22934

ORDER

By this Order, the commission approves HAWAII SUPERFERRY, INC.'s ("HSF") request for an extension of time to meet certain requirements and conditions set forth in Decision and Order No. 21524, filed on December 30, 2004 ("Decision and Order No. 21524"), pursuant to Hawaii Administrative Rules ("HAR") § 6-61-23(a).

I.

HSF

HSF is a Hawaii corporation incorporated on September 22, 2002, as HSF, Ltd. HSF changed its name to Hawaii Superferry, Inc., on February 2, 2004. HSF's principal place of business is at Pier 19, Ferry Terminal, Honolulu, Hawaii. HSF is developing a high-speed, roll-on/roll-off ferry service, using two vessels, capable of carrying up to 866 passengers and 282 cars, or 26 trucks/buses and 65 cars per trip, between the port of Honolulu on Oahu and the ports of Nawiliwili Harbor on

Kauai, Kahului on Maui, and Kawaihae on the island of Hawaii ("Superferry Project"). When both vessels are in service, HSF anticipates making daily round trips between Oahu and Maui, Kauai and Hawaii.

On July 22, 2004, HSF filed an application for a certificate of public convenience and necessity ("CPCN") to operate as a water carrier of passengers and property between the islands of Oahu and Kauai, Maui and Hawaii, pursuant to Hawaii Revised Statutes ("HRS") § 271G-10 and HAR § 6-61-81 ("Application").<sup>1</sup> In its Application, HSF stated that it planned to accept delivery of its first vessel and commence service near the end of 2006.

By Decision and Order No. 21524, the commission approved HSF's Application for a CPCN, but ordered HSF to meet certain requirements and conditions no later than ninety (90) days prior to commencement of service, or by October 31, 2006, whichever comes first.<sup>2</sup> The October 31, 2006 date was consistent with the planned start date articulated by HSF in its Application.

---

<sup>1</sup>On August 3, 2004, Applicant filed Exhibit 17 to the Application pursuant to Protective Order No. 21190. Protective Order No. 21190 was filed on July 29, 2004, to govern the treatment of confidential documents filed in this docket. On September 9, 2004, Applicant filed a revised page 1 of Exhibit 17.

<sup>2</sup>See Decision and Order No. 21524, at 30.

## II.

### Request for Extension of Time

By letter dated and filed on July 3, 2006, HSF requests an extension of time to meet certain conditions and requirements set forth in Decision and Order No. 21524, pursuant to HAR § 6-61-23(a)(1) ("Extension Request").<sup>3</sup> HSF states that delays in the project have caused it to modify the start date for service. Currently, HSF anticipates that its first vessel will arrive in Hawaii no later than May 2007, and that equipment and facilities at the harbors being constructed by the Harbors Division of the State of Hawaii Department of Transportation ("DOT") will be available for use in mid-June 2007. Consequently, the earliest that HSF can start service is July 1, 2007. As a result of the revised dates, HSF states that while it fully intends to comply with the requirements and conditions set forth in Decision and Order No. 21524, "the requirements and conditions are either impossible or extremely impractical to meet by the date of October 31, 2006."<sup>4</sup> Thus, HSF requests that the commission grant it an extension of time to meet the requirements and conditions set forth in Decision and Order No. 21524 to a date consistent with the estimated start date of July 1, 2007.

---

<sup>3</sup>By letter dated and filed on September 6, 2006, HSF represents that the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs does not object to HSF's Extension Request.

<sup>4</sup>Extension Request at 1-2.

In support of its request, HSF cites the following delays in the Superferry Project:

1. Negotiations with the DOT over use of the harbor facilities on each island;
2. Litigation against HSF and the DOT brought by various groups opposed to the Superferry Project;
3. Delays in financing the Superferry Project;
4. Delays in the construction schedule of the vessels to be used in the Superferry Project; and
5. Changes in the design and construction of the barges and transfer spans.

As a result of the aforementioned delays, HSF requests that the commission grant HSF an extension to meet the following requirements and conditions:<sup>5</sup>

1. Certificate of Inspection from the United States Coast Guard ("USCG") for its two (2) vessels. Delays in the construction schedule of the vessels led to delays in the inspections by the USCG necessary for HSF to obtain its Certificate of Inspection. Currently, the Certificate of Inspection on the first vessel is expected to be received shortly before the vessel leaves the Mobile, Alabama shipyard for Hawaii no later than May 2007. Accordingly, HSF requests that the date for delivery of the Certificate of Inspection to the commission

---

<sup>5</sup>HSF represents that it has met the requirements and conditions relating to financing, commission-ordered status reports, compliance with applicable environmental laws, and agreement with the DOT with regard to any leases, licenses, permits or agreements necessary for HSF's use of the harbor facilities. Extension Request at 4-6.

be set at no later than forty-five (45) days prior to commencement of service, or June 1, 2007, whichever comes first.

2. Amendments to HSF's tariff. Decision and Order No. 21254 ordered HSF to amend its tariff to include information on resolving customer complaints, including HSF's and the commission's mailing address, telephone number, and the commission's facsimile number. HSF requests that the commission give it to no later than forty-five (45) days prior to the commencement of ticket sales, or June 1, 2007, whichever comes first, in which to submit a revised tariff to include changes necessitated by (1) the provisions of its Harbors Operating Agreement with the DOT, (2) schedule changes resulting from coordination between HSF and other harbor users, and (3) modification of its operational plans for harbor use, with input from the DOT and others regarding space, scheduling, vehicle movement plans and other harbor use-related issues.

3. Posting its tariff on the HSF website. HSF represents that it will post its revised tariff on its website as soon as its tariff becomes effective. Accordingly, HSF requests that the date for complying with this condition be set at no later than forty-five (45) days prior to commencement of ticket sales, or June 1, 2007, whichever comes first.

4. Evidence of compliance with applicable National Oceanic and Atmospheric Administration ("NOAA") requirements. HSF will need to register its emergency locator beacons with NOAA. This requirement cannot be met until construction of the vessel is complete. HSF requests that it be allowed to comply

with this requirement no later than forty-five (45) days prior to commencement of service, or June 1, 2007, whichever comes first.

5. Compliance with the City and County of Honolulu ("City") permit process for wastewater disposal. HSF states that it "is studying the applicability of these requirements in this area to its operations"<sup>6</sup> and that it will most likely contract the disposal out to a third party. In the case of such an event, HSF will provide the commission with proof of compliance by the third party contractor. HSF states that the third party contract will likely be executed when construction of the vessel is complete and operational plans are finalized, thus it asks for commission approval to extend the date for compliance with this condition to no later than forty-five (45) days prior to commencement of service, or June 1, 2007, whichever comes first.

6. Paying the appropriate water carrier fee. HSF requests that because of its delayed commencement date for service and generation of revenues, that the payment of its initial water carrier gross revenue fee of \$60 be extended to no later than forty-five (45) days prior to commencement of service, or June 1, 2007, whichever comes first.

7. Insurance documents. Pursuant to HRS § 271G-13, and the Harbors Operating Agreement between HSF and the DOT, HSF is required to file certain insurance documents relating to its

---

<sup>6</sup>Extension Request at 7.

vessels and to the harbor facilities.<sup>7</sup> The Harbors Operating Agreement sets forth specific insurance requirements and limits with regard to HSF's operations and requires that HSF commence coverage and provide proof of such coverage to the DOT at least thirty (30) days prior to the commencement of service of the first vessel. HSF requests that compliance with the commission's insurance condition be similarly set at no later than thirty (30) days prior to HSF's commencement of service.

### III.

#### Discussion

HAR § 6-61-23(a)(1) provides, in relevant part:

When by . . . order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

- (1) With or without motion or notice, order the period enlarged, if written request is made before the expiration of the period originally prescribed . . .

HAR § 6-61-23(a)(1).

Order No. 21524 required HSF to comply with certain requirements and conditions no later than ninety (90) days prior to commencement of service, or October 31, 2006, whichever comes first. Because HSF's request to the commission was filed prior

---

<sup>7</sup>The Harbors Operating Agreement provided for facilities and equipment at Honolulu, Nawiliwili and Kahului Harbors to be available to HSF on or about May 1, 2007 (which date was later extended), and at Kawaihae Harbor to be available on or about January 1, 2007. Extension Request at 3.

to the October 31, 2006 deadline, the standard for granting an extension is a showing of good cause. HSF states in its Extension Request that due to various events, including, for example, negotiations over the Harbors Operating Agreement, litigation against HSF by groups opposed to the Superferry Project, and financing and construction delays, the necessary components to bring the Superferry Project to fruition took longer than anticipated. Accordingly, the commission finds good cause to grant HSF's request for an extension of time to meet certain conditions and requirements set forth in Decision and Order No. 21524, with the exception, however, of the payment of HSF's initial water carrier gross revenue fee, noted above in item # 6. The commission finds that HSF should pay the \$60 initial water carrier gross revenue fee within ten (10) days of the date of this order.

In addition, the commission also finds that HSF should (1) submit annual financial reports ("AFR"), pursuant to HAR § 6-65-56, for the years 2004 and 2005 and (2) pay the public utility fees pursuant to HRS § 269-30.

#### IV.

##### Orders

##### THE COMMISSION ORDERS:

1. HSF's Extension Request is granted as follows:

a. HSF shall file a copy of the certificate of inspection from the USCG for its two vessels no later than

forty-five (45) days prior to commencement of service, or June 1, 2007, whichever comes first;

b. HSF shall file appropriate revisions to its tariff no later than forty-five (45) days prior to commencement of ticket sales, or June 1, 2007, whichever comes first;

c. HSF shall post a lawful, revised tariff on its website on the date that the tariff becomes effective, such date being no later than forty-five (45) days prior to commencement of ticket sales, or June 1, 2007, whichever comes first;

d. HSF shall provide evidence of its compliance with NOAA and USCG laws no later than forty-five (45) days prior to commencement of service, or June 1, 2007, whichever comes first;

e. HSF shall provide evidence to the commission of HSF's compliance with the City permit process for wastewater disposal no later than forty-five (45) days prior to commencement of service, or June 1, 2007, whichever comes first;

f. HSF shall file insurance documents relating to its vessels and to the harbor facilities, in connection with HSF's operations, no later than thirty (30) days prior to HSF's commencement of service.

2. HSF shall pay its initial water carrier gross revenue fee in the amount of \$60 no later than ten (10) days from the date of this order.


3. HSF shall (1) submit an AFR, pursuant to HAR § 6-65-56, for the years 2004 and 2005 and (2) pay the public utility fees pursuant to HRS § 269-30.

4. HSF shall file quarterly status reports as ordered by the commission in Decision and Order No. 21524. Each such quarterly status report shall be filed within ninety (90) days of the previous status report.

5. In all other respects, Decision and Order No. 21524 shall remain in full force and effect.

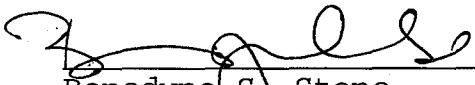
DONE at Honolulu, Hawaii OCT 11 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Benedyne S. Stone  
Commission Counsel

04-0180.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22934 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

JOHN L. GARIBALDI,  
CHIEF EXECUTIVE OFFICER  
HAWAII SUPERFERRY, INC.  
Pier 19, Ferry Terminal  
Honolulu, HI 96817

THOMAS W. WILLIAMS, JR., ESQ.  
AUDREY E. J. NG, ESQ.  
PETER Y. KIKUTA, ESQ.  
GOODSILL ANDERSON QUINN & STIFEL  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813

Attorneys for HAWAII SUPERFERRY, INC.

P. ROY CATALANI  
VICE PRESIDENT  
STRATEGIC PLANNING and  
GOVERNMENT AFFAIRS  
YOUNG BROTHERS, LIMITED  
1331 North Nimitz Highway  
Honolulu, HI 96817

CERTIFICATE OF SERVICE - Continued

J. DOUGLAS ING, ESQ.  
WRAY H. KONDO, ESQ.  
EMI L. M. KAIMULOA, ESQ.  
WATANABE ING KAWASHIMA & KOMEIJI LLP  
First Hawaiian Center  
999 Bishop Street, 23<sup>rd</sup> Floor  
Honolulu, HI 96813

Attorneys for YOUNG BROTHERS, LIMITED

  
\_\_\_\_\_  
Karen Higashi

DATED: OCT 11 2006